

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

AMERICO MASSA,

Defendant.

00-cr-1118 (JSR)

ORDER

JED S. RAKOFF, U.S.D.J.

On December 2, 2002, Americo Massa pled guilty to three Counts of a superseding information: (1) racketeering conspiracy, in violation of 18 U.S.C. § 1962(d) ("Count 1"); (2) conspiracy to commit murder in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(5) ("Count 2"); and (3) use of a firearm in relation to a crime of violence, in violation of 18 U.S.C. § 924(c), for which the predicate offense was conspiracy to commit murder in aid of racketeering ("Count 3"). On March 25, 2003, the Court sentenced Massa to 35 years' imprisonment.

On April 15, 2020, the Court granted, on the Government's consent, Massa's motion to pursuant to 28 U.S.C. § 2255 to vacate his conviction on Count 3 in light of United States v. Davis, 139 S. Ct. 2319 (2019). ECF No. 809. The Court amended the judgment to vacate the conviction on Count 3 and accordingly reduced the defendant's sentence by 60 months' imprisonment to

30 years. On June 10, Massa appealed this amended judgment. ECF No. 814.

Massa now moves for compassionate release pursuant to 18 U.S.C. § 3582(c). ECF No. 813. In light of Massa's pending appeal of the April 15 amended judgment, however, the Court lacks jurisdiction to hear this motion. A notice of appeal "divests the district court of its control over those aspects of the case involved in the appeal," Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982), in both civil and criminal cases, United States v. Ransom, 866 F.2d 574, 575 (2d Cir. 1989) (per curiam). Although this rule does not prevent a district court from correcting clerical errors or acting to aid an appeal, it forbids the district court from making "substantive modifications of judgments," even to the benefit of a defendant. Ransom, 866 F.2d at 575-76.

Accordingly, and pursuant to Federal Rule of Criminal Procedure 37(a)(2), Massa's motion for compassionate release is denied.

SO ORDERED.

Dated: New York, NY
June 26, 2020


United States District Judge